

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT H. NESBITT, JR.,

Plaintiff,

No. CIV S-03-2243 MCE DAD P

vs.

NEIL WAKABAYSHI, et al.,

Defendants.

ORDER

By order filed July 8, 2005, the court notified plaintiff that the court had not received documents in opposition to the motions for summary judgment filed by defendants Putnam and Johnson, even though defendants Putnam and Johnson had filed replies to plaintiff's opposition and defendant Johnson had joined with other defendants in objecting to plaintiff's evidence. Plaintiff was ordered to submit "exact duplicates of his opposition to the Putnam and Johnson motions." In response to the order, plaintiff has burdened the court and abused the judicial process by submitting the missing documents along with duplicates of fifteen documents already on file. Also before the court is defendants' application to file additional replies to plaintiff's opposition.

The court finds that the following documents received from plaintiff on July 12, 2005, comprise his opposition to the Putnam and Johnson motions: the four documents docketed

1 as #423, 424, 425, and 426, in opposition to defendant Putnam's motion for summary judgment;  
2 the four documents docketed as #427, 428, 429, and 430, in opposition to defendant Johnson's  
3 motion for summary judgment; the two requests for judicial notice docketed as #434 and 435,  
4 both seeking judicial notice of the same two declarations and Solano County's strip search  
5 policy; and the request for judicial notice docketed as #422, seeking judicial notice of four  
6 internal affairs interviews and medical reports. These documents will be considered by the court.

7           The following documents received from plaintiff on July 12, 2005, are duplicative  
8 of documents already on file: the four documents docketed as #418, 419, 420, and 421, in  
9 opposition to defendant Cueva's motion for summary judgment; the three documents docketed as  
10 #431, 432, and 433, in opposition to defendant Gray's motion for summary judgment; the four  
11 documents docketed as #436, 437, 438, and 439, in opposition to defendant Eakin's motion for  
12 summary judgment; and the four documents docketed as #440, 441, 442, and 443, in opposition  
13 to defendant C. Bidou's motion for summary judgment. These duplicative documents will not be  
14 considered by the court. To avoid confusion in the record, the court will strike these documents.

15           In their application to prepare replies on behalf of defendants Wakabayashi,  
16 James, and M. Bidou, defendants assert that the court's July 8, 2005 order "allow[ed] plaintiff to  
17 file all of his opposition" by July 18, 2005, that there has been "a flurry of service and filing" by  
18 plaintiff since the court issued its order, and that plaintiff's filings include requests for judicial  
19 notice that were not previously filed. Defendants Wakabayashi, James, and M. Bidou seek leave  
20 to submit replies, objections, and responses to plaintiff's oppositions.

21           The court's July 8, 2005 order directed plaintiff to file duplicates of his opposition  
22 to the Putnam and Johnson motions. Plaintiff was not granted leave to file any further opposition  
23 to the motions filed by defendants Wakabayashi, James, and M. Bidou, and plaintiff did not do  
24 so. Moreover, the docket reflects that on June 23, 2005, defendants Wakabayashi and James  
25 filed replies to plaintiff's opposition, along with objections to plaintiff's evidence. Although  
26 defendant M. Bidou did not file a reply, he has not shown good cause for his failure to do so, and

1 the court's order concerning plaintiff's opposition to the Putnam and Johnson motions does not  
2 provide defendant M. Bidou with ground for filing an untimely reply. Defendants Wakabayashi,  
3 James, and M. Bidou will not be granted leave to file additional replies, objections, or other  
4 responses to plaintiff's oppositions to their motions.

5 With regard to the three requests for judicial notice received from plaintiff on July  
6 12, 2005, the court finds that defendants Putnam and Gray previously filed objections to the  
7 request for judicial notice that has been filed and docketed as #435.<sup>1</sup> (See Defs. Gray's and  
8 Putnam's Objections to Pl.'s Evidence in Supp. of Opp'n to Mots. for Summ. J., filed June 16,  
9 2005, docketed as #369.) In objections to evidence filed by defendants Eakin, Johnson, Cueva,  
10 and C. Bidou on June 20, 2005, defendants state that plaintiff's opposition references a request  
11 for judicial notice but none was filed. (See Defs. Eakin's, Johnson's Cueva's and C. Bidou's  
12 Objections to Pl.'s Evidence in Supp. of Opp'n to Mots. for Summ. J., filed June 20, 2005,  
13 docketed as #391, at 3.) Good cause appearing, defendants Cueva and Johnson will be granted  
14 leave to file objections to plaintiff's request for judicial notice docketed as #434, and defendants  
15 C. Bidou, Eakin, Gray, Putnam, Cueva, and Johnson will be granted leave to file objections to  
16 plaintiff's request for judicial notice docketed as #422.

17 The court does not anticipate granting any party leave to file further briefing or  
18 evidence related to the pending motions for summary judgment. Findings and recommendations  
19 will likely be issued in August, and all parties will be expected to file timely objections and  
20 replies. Requests for extensions of time will be looked upon with great disfavor and may be  
21 denied.

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25 <sup>1</sup> Attached to the request for judicial notice docketed as #435 is a copy of plaintiff's  
26 statement of disputed facts in opposition to defendant Gray's motion for summary judgment. It  
appears that the statement of disputed facts was attached in error. The document is duplicative  
and will be disregarded.

Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk of the Court is directed to strike the following documents filed by plaintiff on July 12, 2005: the documents docketed as #418, 419, 420, 421, 431, 432, 433, 436, 437, 438, 439, 440, 441, 442, and 443;

2. The July 18, 2005 ex parte application by defendants Wakabayashi, James, and M. Bidou to prepare replies is denied;

3. Defendants Cueva and Johnson are granted five court days from the date of this order to file objections to plaintiff's request for judicial notice docketed as #434; and

4. Defendants C. Bidou, Eakin, Gray, Putnam, Cueva, and Johnson are granted five court days to file objections to plaintiff's request for judicial notice docketed as #422.

DATED: July 20, 2005.

  
DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

DAD:13  
nesb2243.replies